IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11844 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

ANWAR A CHAUHAN

Appearance:

MR KM PARIKH for Petitioner

MR M.H. RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2000

ORAL JUDGEMENT

Rule. Mr.Upadhyaya for Mr.M.H. Rathod appears and waives service of rule for the respondent.

The petitioner has filed this Special Civil Application challenging the Award passed by the Labour

Court, Rajkot in Reference (LCR) No.300 of 1994. It is the case of the petitioner that at the relevant time, the concerned workman was serving as a Conductor and during checking of the bus on the relevant time, it was found that he had made some wrong punching on the tickets. The aforesaid wrong punching was made by the said workman on tickets in order to re-issue the tickets which are already used. The Disciplinary Authority imposed punishment of fine. However, the said order was taken in review by the Reviewing Authority and the Reviewing Authority, after hearing the concerned workman, passed an order of removal against the respondent workman. Thereafter, the respondent-workman raised the Industrial Dispute. The Presiding Officer, Labour Court, Rajkot, ultimately, by an Award dated 25.8.1999, set aside the aforesaid removal order and the respondent workman was ordered to be reinstated in service without back wages on his original post with continuity of service. The Labour Court also substituted the punishment and instead of removal the concerned workman was subjected to punishment of withholding of one increment without future effect. The petitioner has challenged the aforesaid order of the Labour Court in the present Special Civil Application.

The Labour Court has found that looking to the facts and circumstances of the case, powers under Section 11A of the I.D. Act was required to be invoked and considering the judgment reported in 1996(1) G.L.H. 748, the Labour Court found that withholding of one increment without future effect would be an appropriate punishment in the facts of the case.

I have heard Mr.K.M. Parikh for the petitioner and Mr.Upadhyaya for Mr.M.H. Rathod for the respondent. It is no doubt true that in the appropriate case it is open for the Labour Court to invoke the provisions of Section 11A of the I.D. Act. However, when it is found that the respondent has indulged himself in serious type of financial irregularity, withholding of one increment without future effect cannot be said to be an adequate substitution of the punishment imposed by the employer. Mr.Parikh for the petitioner submits that in any case, punishment should be awarded in such a manner that it should have some deterrent effect on the concerned employee. Mr.Rathod for the respondent states that he has no objection if this Court ultimately substitutes the order of punishment imposed by the Labour Court. Looking to the facts and circumstances of the case, I am of the opinion that the punishment imposed by the Labour Court is not adequate and instead of withholding one increment without future effect, at least same is required to be

substituted by withholding of one increment with future effect. The Award of the Labour Court is modified accordingly to the aforesaid extent, and instead of withholding of one increment without future effect, it is substituted as withholding of one increment with future effect. It is also clarified that it would be open for the Corporation to absorb the present workman at any other place wherein he may not have to deal with financial affairs and, therefore, if the Corporation is of the opinion that it is desirable to post him on any other post and that it is not advisable to retain him as a Conductor, it is open for the Department to do so. However, while posting him on any other post, his pay which he is getting at present on the post of Conductor should be protected.

Subject to what is stated above, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

20th November, 2000 (P.B. Majmudar, J.)

****

(apj)